

§ 1040.84

(d) *Age distinction* means any action using age or an age-related term (for example, “18 or over”).

(e) *Age-related term* means a word or words which necessarily imply a particular age or range of ages (for example, “children”, “adult”, “older persons”, but not “student”).

(f) *Days* mean calendar days.

(g) *Discrimination* means unlawful treatment based on age.

(h) *FERC* means the Federal Energy Regulatory Commission.

(i) *Field Civil Rights Officer* means the official in each DOE field office with responsibility for administering DOE’s Civil Rights Program related to non-discrimination in Federally assisted programs or activities.

(j) *Recipient* means any State or its political subdivision, instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes an individual who is the ultimate beneficiary of the assistance.

(k) *Secretary* means the Secretary, Department of Energy.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

STANDARDS FOR DETERMINING AGE DISCRIMINATION

§ 1040.84 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1040.86 and of these regulations.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

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(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(3) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 1040.85 Definitions of “Normal Operation” and “Statutory Objective”.

For purpose of §§ 1040.86 and 1040.87, the terms *normal operation* and *statutory objective* shall have the following meanings:

(a) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 1040.86 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 1040.84, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation of a program or activity if:

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and